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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1255 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

Thakkar Dharmendra Natvarlal and others

Versus

Gujarat Revenue Tribunal and others

Appearance:

MR J.M.Patel for Petitioners

Mr L.R. Pujari, AGP for respondent nos. 1,2 and 4.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 20/12/1999

ORAL JUDGEMENT

This petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the order dated 13th August, 1981 passed by the Mamlatdar, Waghodia, Ta and Dist: Vadodara in case no.1/13 under section 37(2) of the Bombay Land Revenue Code and the

order dated 16.12.88 passed in Appeal no. 10-AA-59 of 1984 passed by Gujarat Revenue Tribunal.

2. According to the petitioners, the land bearing survey no. 720 admeasuring 5 acres 3 gunthas of village Jharod was granted to the petitioners by Baroda State vide Hajur order no.218 dated 13.12.1916 and that was mutated in the record of rights for the year 1922-23 to 1926-27 in the name of Musabhai Patel by an order dated 253/82 dated 24th September, 1925 by taking Nazrana in the sum of Rs.25/- only for one year and charging special assessment of 1.1/2 times every year. The said Masavali Patel sold the land alongwith survey no. 797 to one Chunilal Motilal Shah by executing a sale deed dated 22nd October, 1936. Similarly, Motilal Shah sold the land of two survey nos. as aforesaid to one Noorbhai Valibhai by a registered sale deed dated 21st October, 1943. The Manager/Administrator of Noorbhai Valibhai sold the land alongwith land bearing survey no. 797 to one Shantilal Maganlal by a registered sale deed dated 24th July, 1944. Shantilal Maganlal also sold that land alongwith survey no.797 as proprietor and manager of firm running in the name of said Vipinchandra Shantilal and Company to one Thakkar Ranchhoddas Hargovandas for a consideration of Rs.87,201/- by a registered sale deed dated 6.11.47. Said Ranchhoddas Hargovandas was the grand father of the petitioners and father of respondent no.3. After the death of said Ranchhoddas, Ginning Press and Oil Mills running on the land of survey no. 720, could not run the same due to heavy flood or other reasons. The administration of the Baroda state was taken over by the Government of Bombay in exercise of the powers under section 3(2) of Extra Provincial Jurisdiction Act, 1947. Due to integration and Merger of the Baroda State with the State of Bombay, the Bombay Land Revenue Code was made applicable to the merged area. By entry no.1190, the name of Ranchhoddas Hargovandas was deleted from the record of right and that order was not communicated to the parties who were affected by the same. A show cause notice dated 9.11.72 was issued to grand father of the petitioners and father of respondent no. 3 by the respondent no.2 as to why the land should not be forfeited as the same was not used for NA purpose of Ginning and Pressing Factory for which it was given. The petitioners replied that show cause notice. The respondent no.2 again issued a notice to the petitioner no.1 and respondent no. 3 for an inquiry contemplated under section 37(2) of the Bombay Land Revenue Code and the respondent no. 2 passed an order dated 29th June, 1974 to the effect that the said land bearing survey no. 720 admeasuring 5 acres and 3 gunthas belongs to the

Government and it is in the ownership of the Government. The petitioner no. 1 preferred appeal no. 28 of 1974 before the Collector, Baroda under section 203 of the Bombay Land Revenue Code. The said appeal was dismissed by the Collector vide his order dated 29th August, 1975. The petitioner therefore, preferred a Revision Application before the Revenue Tribunal against the order dated 29th August, 1975 of the Collector, Baroda. The Tribunal set aside the order of the Collector dated 23rd February, 1972 and the matter was remanded to the respondent no.2 for issuing a requisite notice under Rule 29(1)(a) of the Land Revenue Rules for fresh inquiry after giving opportunity to the parties to lead their evidence. After the remand, the Mamlatdar by an order dated 31st January, 1979 held that the said land was a Government land and the petitioners had no right or ownership over the land. The petitioners therefore, preferred appeal no. 10AA 206/79 before the Tribunal. After considering the evidence on record, the Tribunal held that the land was granted to Musavali Patel for construction of a factory by taking Nazrana for an amount of Rs.25/- for the current year and not assessment over the said year and the respondent no.1 remanded the said matter to respondent no.2. But it was also observed that the land was governed by the terms and conditions laid down in the Baroda Land Revenue Code and rules framed thereunder. The respondent no.1 stayed the operation of the order dated 31st March, 1979 passed by the respondent no. 2 and remanded the matter to him for holding a fresh inquiry after giving an opportunity to the parties to lead their evidence, additional evidence, if they so liked. The Mamlatdar, after remand held an inquiry and considered the relevant provisions of law prevalent at the relevant time and relying upon the conclusion that the said land was of the ownership of the Government, held that the petitioners had a right to instal a mechanical factory on the land.

3. The petitioners being aggrieved by the order preferred Appeal no.10AA-59/84 before the Revenue Tribunal. By the impugned order, the Tribunal has confirmed the finding of the Mamlatdar and has dismissed the appeal by his order dated 16.12.88. Therefore, the petitioners have filed the present petition before this Court.

4. Heard the learned advocates for the parties and perused the impugned order and other relevant material on the record. The learned counsel for the petitioner firstly contended that under section 37(2) of the Bombay Land Revenue Code, the authority concerned is

not empowered to initiate inquiry suo motu in absence of any claim of the petitioners or the State Government. Thus, the order passed by the Authority (Mamlatdar) is without jurisdiction and is a nullity. He relied on the decision of the Supreme Court in the case of State of Gujarat vs. Maharaj Shri Amarshinhji Himmaatsinhji reported in AIR 1978, SC,1167 wherein it is held that the Collector can initiate the inquiry under section 37(2) of the Code either the State or the individual must put forward a claim to a property or any right in or over the property and it is such claim that is to be inquired into by the Collector whose decision, subject to a civil suit filed within one year, is rendered final.

5. The learned counsel for the petitioners further argued that in view of the fact that the dispute is of serious nature regarding ownership and title, the Collector should have referred the matter to the competent Civil Court for a decision under the provisions of section 37(1) of Bombay Land Revenue Code and relied on the decision of the Apex Court in the case of State of Gujarat vs. Patel Raghav Natha and others reported in 10 GLR, 992 wherein it has been held that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious, the appropriate course for the Collector or the Commissioner would be to refer the parties to a Competent Court and not to decide the question of title himself against the occupant. It is also argued by the learned advocate for the petitioners that the provisions of Baroda Land Revenue Code and Baroda Land Revenue Rules have ceased to be applicable after the merger of Baroda State on 1.5.49 with the State of Bombay. The authorities below have committed an error in applying the provisions of Baroda Land Revenue Code and Baroda Land Revenue Rules in the present case.

6. The next contention of the learned advocate for the petitioners is that the authorities below have not considered the important and relevant documents and other oral evidence which was on record and the Hajur order no. 218 dated 31st December, 1916 and the order of Government of Baroda State no. 253/82 dated 24th September, 1925 which were in possession of the respondents and they have not produced the same for the determination of the nature of conveyance made in favour of the purchaser. The authorities below have no jurisdiction to go behind the title document in the form of a registered sale deed unless it was challenged and set aside by a competent civil court. The Courts below

have also erred in not presuming the possession of the petitioner as old as of 75 years. The petitioners' case is that when their predecessors and they have remained in peaceful possession and enjoyment since 1925 i.e. since last about 75 years, hence it is the duty of the court below to presume the title of the petitioners on the basis of long tenure of possession of about 75 years from 1925. He also relied on the decision of the State of Gujarat vs. Allauddin Babumiya Shaikh, reported in AIR, 1990 SC, 2220. Without setting aside and cancelling sale deeds in the revenue record in favour of the Government, it cannot form the basis for non-entitlement. Nazrana means a premium price of the property to the persons. The courts below have erred in holding otherwise.

7. On the other hand, the learned AGP Mr. Pujari contended that the matter was twice remanded to the Mamlatdar and full opportunity was given to the parties to lead their evidence and after taking evidence on record, the Mamlatdar considered the entire evidence on record and came to the conclusion that the land in question belongs to the Government and it is of the ownership of the Government and if permission to a private person for the use of mechanical factory was issued, it cannot be said that it is the property of a private person. The Government waste land was granted for a mechanical factory and the ownership is of the Government and the same cannot be transferred to the name of any other person and cannot be sold out indicating the sale price in the sale deed. No ownership has been granted at the relevant point of time. Internal sale transaction of the land in question between the private parties are not binding on the Government. From the order dated 29.5.1945 passed by the Suba of Dabhoi division, the land cannot be transferred to any person. As such, on the basis of the sale deed, the petitioners cannot be held to be owners of the property in dispute. The petitioners are paying special cess of the land in question and due to that reason, it is not proved that the petitioners are owners of the land and the petitioners have failed to prove their ownership of the land in dispute. The authorities below have also after going through the entire record come to the conclusion that the grant of the land was not absolute and it was conditional and the Mamlatdar was perfectly justified in holding that the Rules do not provide to grant land on ownership basis and the term "Nazrana" does not mean occupancy. Eventhough the Nazrana was taken, the land was granted for a specific purpose and if that purpose is changed, the petitioners will not get full title of ownership or to use the land for any other purpose. The

documents allegedly in possession of Government are not traceable or not found, the Government cannot produce them and no adverse inference can be drawn against the Government. The lower appellate authority and the Tribunal are fully justified in dismissing the appeal and confirming the finding recorded by the Mamlatdar.

8. I have carefully considered the rival contentions raised by the learned counsel for the parties and perused relevant record. This is a case in which an inquiry under section 37(2) of the Bombay Land Revenue Code has been initiated. The contention of the learned counsel for the petitioners that the inquiry cannot be initiated suo motu unless claim is made by any of the parties. As no claim has been made, either by the petitioner or by the State Government, the lower authorities have no jurisdiction to initiate suo motu inquiry contemplated under section 37(2) of the Code, has no force inasmuch as where any power is entrusted to any authority and if that power even if no application is made for initiation for exercise of that power, the power can be exercised. In the present case, it cannot be said that the Mamlatdar has no power or jurisdiction to initiate suo motu proceedings of the inquiry under section 37(2) of the Code. Even if it is assumed that the powers were exercised suo motu by the Mamlatdar, the inquiry cannot be said to be illegal or without jurisdiction on this basis.

9. So far as the contention of the learned advocate for the petitioners that the dispute is of serious nature, appropriate course for the Collector/Mamlatdar was to refer the matter to the competent Civil Court for a decision is not sustainable in the eye of law in view of the fact that if the authority has not directed the parties to go to the Civil Court for a decision, the petitioners can also file a civil suit for that purpose. The petitioners have not availed of that alternative remedy. So far as the contention of the learned advocate for the petitioner that both the authorities had relied on the provisions of Baroda Land Revenue Code and Baroda Land Revenue Rules in arriving at the findings is concerned, the authorities below are fully justified in applying enactment, rules and regulations applicable at the relevant time. Hence, the authorities have not committed any error in this respect. The contention of the learned advocate for the petitioners is that the courts below have not taken into account the Hajur order dated 31st December, 1916 and the Government order dated 24th September, 1925, as they were with the respondents and could have been summoned in

order to determine the ownership and the authorities below have committed an error in determining the title or ownership of the land without summoning those two documents. In this respect, the learned Assistant Government Pleader for the respondents submitted that the documents available with the Government at the relevant time were filed and it appears that those documents were not available with the Government. Hence, those documents could not be availed of. In my opinion, if those documents were not available, it cannot be said that in absence of those documents, the authorities below have committed an error in deciding the matter. So far as the contention of the learned advocate for the petitioners that both the authorities below have no jurisdiction to go behind the title documents in the form of registered sale deed unless they are set aside by the Competent Court, is concerned, if any transaction is made between private parties and individual persons and the Government is not made a party in those transactions, those documents cannot be said to be binding to the Government. As such, this contention of the learned advocate for the petitioners is not sustainable. The further contention of the learned counsel for the petitioners is that the petitioners have been in possession and occupation of the land in question for more than 75 years and hence, the petitioners' title has become perfect on the basis of long occupation and the petitioners have become owners of the property in question. This argument of the learned advocate for the petitioners is not tenable in view of the summary proceedings under section 37(2) of the Bombay Land Revenue Code. A presumption cannot be drawn only on the basis of possession of a particular party, but that can be drawn after considering the facts and circumstances and evidence led by the parties in the regular proceedings. It is not proper to take any presumption on piecemeal evidence or material on record. That requires a thorough examination and consideration on the basis of the evidence led by the parties in regular civil proceedings.

10. In the present case, alternative remedy available under sub-section (3) of section 37 of the Bombay Land Revenue Code wherein a suit can be filed within one year from the date of any order passed by the Competent Authority under sub-section (2) of section 37 of the Bombay Land Revenue Code. If the suit is filed by any of the parties, the parties can lead his evidence in support of their claim. In the present case, the petitioners had an opportunity to file a civil suit for a declaration of the title under section 37(3) of the Bombay Land Revenue Code. Had the suit been filed, the

petitioners would have been able to produce each and other document and evidence and they could have also moved the Court concerned for summoning the documents from the department concerned on which they are relying. They have not availed of that alternative remedy. Hence, looking to the scope of Articles 226 and 227 of the Constitution, I am of the opinion that this petition lacks merits and is liable to be dismissed.

11. In the last the learned advocates for the petitioners submitted that the petitioners have been in possession of the land in question for more than 75 years and they are still in possession and hence, they may be permitted to move the Government for regularisation of the title and possession of the land on such terms and conditions which may be imposed by the Government.

12. In view of the above, this petition is dismissed. Rule is discharged with no order as to costs. However, if the petitioners make an application to the appropriate authority in this connection, the authorities will consider the same within a period of three months from the date of presentation of such application alongwith a copy of this judgment and decide the same in accordance with law.

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